

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

| | | |
|-----------------------------------------|---|-------------------------------------|
| Larry Shively and Nora Shively, |) | Civil Action No.: 4:08-cv-02702-RBH |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | ORDER |
| |) | |
| Lottsa Cheese Inc., and Patrick Griffy, |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

Pending before the court is Plaintiffs' [Docket Entry 68] Motion for Summary Judgment.¹ Plaintiffs' motion states "Plaintiffs move for summary judgment on the issues of negligence, absence of comparative negligence, and negligence within scope of employment."

Defendants respond that they did not assert the affirmative defense of comparative negligence against Plaintiffs and further they did not dispute that Defendant Griffy was acting within the scope of his employment for Lottsa Cheese, Inc.

However, Defendants argue that genuine issues of material fact exist as to the issues of Griffy's negligence and the proximate cause of the accident, and also therefore whether he was negligent in the course and scope of his employment.

After review of the memoranda and deposition excerpts filed by the parties, the court agrees with Defendants and finds that genuine issues of material fact exist at this stage and therefore denies Plaintiffs' motion for summary judgment as to the remaining disputed issues.

¹ Under Local Rule 7.08, "hearings on motions may be ordered by the Court in its discretion. Unless so ordered, motions may be determined without a hearing." In this case, the court finds that the issues have been adequately briefed by both parties and that a hearing is not necessary.

IT IS SO ORDERED.

s/R. Bryan Harwell

R. Bryan Harwell

United States District Judge

January 4, 2010

Florence, South Carolina